SUPREME COURT OF THE UNITED STATES

No. 131--October Term, 1968

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FILED
DEC 13 1968
JOHN F. DAVIS, CLERK

Carmine Vincent Palmieri,)
)
Petitioner,)
)
v.)
)
State of Florida.)

PETITION FOR REHEARING

The petitioner, Carmine Vincent Palmieri, by his undersigned Court-appointed counsel, respectfully petitions this Court for a rehearing and in support thereof would show unto the Court as follows:

1. The arrest of the petitioner Palmieri which was made at his home at 1:30 in the morning without a warrant was clearly illegal. The record shows that the arrest was made approximately a month after the alleged offense and, therefore, it could not be based upon the theory that it was an arrest for an offense committed in the presence of the arresting officer. The record also shows an absence of probable cause for the making of the arrest.

2. With respect to probable cause for making the arrest, it is true, on page 15 of the record, that the prosecuting witness was shown photographs and purported to pick one person out from the photographs, but at no point in the record does it appear that the person picked out was the petitioner, Carmine Vincent Palmieri.

3. A review of the transcript of oral argument will reveal that in a colloquy with Mr. Justice Stewart, counsel for the State conceded that

the record failed to show probable cause for the arrest of the petitioner.

4. The record further shows (Appendix pp. 4-5, 6-7, 8-9) that the question of an illegal arrest was preserved at the trial court level. There is also some doubt as to whether or not it was pursued in the Florida appellate courts. However, petitioner should not be penalized by the deprivation of 20 years of his liberty as a result of the failure of his State Court counsel to pursue the illegal arrest issue. A petitioner should be allowed to raise questions of fundamental error affecting his constitutional rights at any time.

5. In this cause the record reveals that all of the evidence used against the petitioner was gathered by line-ups after the illegal arrest. It is true that the record reveals an in-court identification but this was made by the same person who had made the illegal line-up indentification and, as this Court pointed out in United States v. Wade, 388 U.S. 218, 87 S.Ct. 1926, 18 L.Ed.2d 1149, once a prosecuting witness has identified the accused in a line-up he is not likely to change his mind.

6. Evidence obtained as a result of an illegal arrest is clearly inadmissible and a conviction based thereon cannot stand. See Wong Sun v. United States, 371 U.S. 471 (1963).

WHEREFORE, this Court's order in this cause should be set aside and petitioner's conviction for armed robbery should be reversed.

Respectfully submitted,

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14th Floor First National Bank Building
Miami, Florida 33131
Counsel for Petitioner

I certify that the foregoing Petition for Rehearing is presented in good faith and not for purposes of delay.

Phillip Goldman

Phillip Goldman

Sworn to and subscribed before me
this 11th day of December, 1968.

Clare A. Gosnell

Notary Public, State of Florida
at Large.

My commission expires:

Notary Public, State of Florida at Large
My Commission Expires Sept. 28, 1970
Bonded by Transamerica Insurance Co.